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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,336	12/01/2003	David J. Zahniser	2024738-7030163001 (11.01)	5486
7590 08/29/2005 Bingham McCutchen, LLP Suite 1800 Three Embarcadero San Francisco, CA 94111-4067			EXAMINER STOCK JR, GORDON J	
			ART UNIT 2877	PAPER NUMBER

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,336

Applicant(s)

ZAHNISER ET AL.

Examiner

Gordon J. Stock

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-32 and 36-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-32 and 36-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. **Claims 16, 22, 25-28, 37-39** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wunderman et al. (6,122,042)**—previously cited further in view of **Bennion (4,774,434)**.

As for **claims 16, 22, 25-28, and 37**, Wunderman in an optical identification device discloses the following: a light source having a first narrow band wavelength and a second narrow band wavelength, at least 15 LEDs of 15 different wavelengths (col. 9, lines 12-15); wherein, there maybe at least 15 arrays of at least two same wavelength LEDs (col. 14, lines 35-45); where these LEDs may be formed on a single substrate (Figs. 2b and 6a); with array of LEDs are formed on a first die and a second array of LEDs are formed on a second die with a common substrate from which they are attached and may be formed on a single die (Figs. 2b and 6a). Wunderman is silent concerning a lens. However, Bennion in a light display teaches that each die of an LED is encapsulated by a lens (col. 4, lines 29-43). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to have each die have a lens in order to protect it and in order to provide focusing of light generated.

As for a slide, Wunderman is silent. However, he teaches the devices may be used in microscopes to study biological materials (col. 42, lines 20-30). Examiner takes official notice that slides are well-known in the art as biological sample supports in microscopy. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made a slide was used in order to provide support for a biological sample for microscopic investigation.

As for **claim 38**, Wunderman in view of Bennion discloses everything as above (see **claim 16**). He is silent concerning Koehler illumination. Examiner takes official notice that Koehler illumination is well-known in the art for providing uniform illumination across a microscope slide. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to have the system have Koehler illumination in order to provide uniform illumination over the biological sample being investigated.

As for **claim 39**, Wunderman in view of Bennion discloses everything as above (see **claim 16**). In addition, Wunderman discloses a microchip module (Fig. 6a).

3. **Claims 17-21, 23, 24, 40, 41** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wunderman et al. (6,122,042)**—previously cited further in view of **Bennion (4,774,434)** further in view of **Ishihara et al. (5,791,345)**—previously cited.

As for **claims 17-21, 23, 24**, Wunderman in view of Bennion discloses everything as above. He discloses multiple arrays of LEDs (col. 14, lines 35-45) that comprise 15 different wavelengths (col. 9, lines 12-15) that are in the wavelength range (col. 6, lines 24-25). He is silent concerning red leds, green leds, red and green LEDs arrays and wavelengths between 690 nm to 750 nm or 500 nm and 600 nm. However, he discloses using the system for biological investigation (col. 42, lines 20-30). And Ishihara teaches using red leds, green leds, red and green LED arrays and wavelengths between 690 to 750 nm or 500nm and 600 nm (col. 5, lines 1-6; col. 18, lines 25-30) to analyze blood (col. 3, lines 55-60). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to have the illumination system comprise red and green LEDs arrays with wavelengths between 690 to 750nm and 500nm and 600nm in order to investigate biological materials such as blood.

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As for **claim 40**, Wunderman in view of Bennion discloses everything as above (see **claim 39**). And Wunderman further discloses a substrate with array of LEDs attached via first and second dies (Figs. 2b and 6a). Wunderman is silent concerning red and green LEDs. However, he discloses using the system for biological investigation (col. 42, lines 20-30). And Ishihara teaches using red leds, green leds, red and green LED arrays and wavelengths between 690 to 750 nm or 500nm and 600 nm (col. 5, lines 1-6; col. 18, lines 25-30) to analyze blood (col. 3, lines 55-60). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to have the illumination system comprise red and green LEDs arrays with wavelengths between 690 to 750nm and 500nm and 600nm in order to investigate biological materials such as blood.

As for a plurality of lenses, Wunderman in view of Ishihara is silent. However, Bennion in a light display teaches that each die of an LED is encapsulated by a lens (col. 4, lines 29-43). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to have each die have a lens in order to protect it and in order to provide focusing of light generated.

As for **claim 41**, Wunderman in view of Ishihara and Bennion discloses everything as above (see **claim 40**). As for the first and second dies embedded in a potting material with the lenses attached to the potting material, Wunderman in view of Ishihara is silent. However, Bennion teaches that components are potted to secure them to a circuit board (col. 4, lines 55-60). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to have the lenses and dies attached and embedded in potting material in order to secure them to a circuit board.

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4. **Claims 29-32, 36, and 42** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ishihara et al. (5,791,345)**—previously cited in view of **Wunderman et al. (6,122,042)**—previously cited further in view of **Bennion (4,774,434)**.

As for **claims 29-32, 36**, Ishihara discloses the following: an array of green and an array of red LED's thereby having at least one red LED and at least one green LED, multiple green and multiple red LED's (col. 18, lines 25-30); and provides first and second LED on a common substrate (see Figs. 25-26) but fails to provide first and second die or a single die. However, Wunderman discloses a system for optically identifying characteristics that includes LED's attached to a die or multiple dies (Figs. 2b and 6a). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to mount the LED's on a first and second die or a single die to provide the LED with a power supply.

As for a plurality of lenses with a first lens provided over a first die and a second lens provided over a second die, Ishihara and Wunderman are silent. However, Bennion in a light display teaches that each die is encapsulated by a lens (col. 4, lines 29-43). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to have each die have a lens in order to protect it and in order to provide focusing of light generated.

As for **claim 42**, Ishihara in view of Wunderman and Bennion disclose everything as above (see **claim 29**). As for the first and second dies embedded in a potting material with the lenses attached to the potting material, Ishihara is silent. However, Bennion teaches that components are potted to secure them to a circuit board (col. 4, lines 55-60). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to have the

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lenses and dies attached and embedded in potting material in order to secure them to a circuit board.

Response to Arguments

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Several facts have been relied upon from the personal knowledge of the examiner about which the examiner took Official Notice. Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made by the Board of Patent Appeals and Interferences. In re Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946); In re Fischer, 125 F.2d 725, 52 USPQ 473 (CCPA 1942). See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice). If applicant does not seasonably traverse the well-known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, applicant is charged with rebutting the well-known statement in the next reply after the Office action in which the well known statement was made.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Fax/Telephone Numbers

If the applicant wishes to send a fax dealing with either a proposed amendment or a discussion with a phone interview, then the fax should:

- 1) Contain either a statement "DRAFT" or "PROPOSED AMENDMENT" on the fax cover sheet; and
- 2) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Papers related to the application may be submitted to Group 2800 by Fax transmission. Papers should be faxed to Group 2800 via the PTO Fax machine located in Crystal Plaza 4. The form of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Machine number is: (571) 273-8300

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon J. Stock whose telephone number is (571) 272-2431.

The examiner can normally be reached on Monday-Friday, 10:00 a.m. - 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

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supervisor, Gregory J. Toatley, Jr., can be reached at 571-272-2800 ext 77.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gs

August 22, 2005



Layla Lauchman
Primary Examiner
Art Unit 2877